coördinate department of the government leads the courts to resolve every reasonable doubt in favor of freedom of executive action and to require a clear case before they will proceed to control it.

ERRONEOUS DESCRIPTION OF LAND IN A WILL. — When a testator intends to devise a plot of land and in his will inadvertently gives it the wrong township, range, or lot number, can the lot the testator intended pass under the will? For example, if the testator owns only lot number 32 in a certain township and it plainly appears from extrinsic evidence that it was that lot that he intended to devise, but in the will the lot is designated number 31, can lot number 32 pass?[1] Courts have not jurisdiction to correct mistakes in wills by reformation.[2] So if the result is to be attained it must be by construing the words in the will so as to apply to the property the testator intended to give.[3]

It is always possible under the maxim *Falsa demonstratio non nocet* for a court to disregard portions of a description shown to be erroneous, and to apply the remaining true portion.[4] In the cases where it is known that the testator intended to devise a piece of land other than that designated in the will, the problem of construction becomes one of the sufficiency of the description after disregarding the erroneous lot numbering. This is true no matter what theory of interpretation is adopted. The orthodox view is that expounded by Vice-Chancellor Wigram,[5] that the object of interpretation is never "what the testator meant" but "what is the meaning of his words;" or, as Mr. Kales puts it, the subject matter of interpretation is always the legal act contained in the writing.[6] Clearly this leaves the question one of the sufficiency of the words. But this is no less the case if the theory of Professor Hawkins is followed, that the sole object of interpretation is to determine the intention of the writer, for Professor Hawkins admits that in interpreting a legal document there is

States, *supra;* United States *v.* Black, 128 U. S. 40, 48 (1888). Also, the court has power to grant relief to an individual aggrieved by a decision based upon a statute inapplicable to the facts in question. American School, etc. *v.* McAnnulty, 187 U. S. 94 (1902); Burfenning *v.* Chicago, St. Paul, etc. R. Co., 163 U. S. 321 (1896).

[1] The problem has been presented by several recent cases. Stevenson *v.* Stevenson, 285 Ill. 486, 121 N. E. 202 (1918); Perkins *v.* O'Donald, 82 So. 401 (Fla., 1919); Wilmes *v.* Tiernay, 174 N. W. 271 (Ia., 1919). See RECENT CASES, *infra*, p. 486.

[2] Newburgh *v.* Newburgh, 5 Mad. 364 (1820). The English courts have gone far in striking out words inserted by mistake. Morrell *v.* Morrell, 7 P. D. 68 (1882); Goods of Boehm, [1891] P. 247. But they will not substitute one word for another. Goods of Schott, [1901] P. 190, overruling Goods of Bushell, 13 P. D. 7 (1887). But *cf.* Estate of King, 53 IRISH LAW TIMES, 60 (1919), where, on facts nearly identical with those of Goods of Bushell, the same result was reached by interpretation.

[3] The problem, of course, is not at all the same as that which would be presented if it were shown that the testator used "thirty-one" as a symbol or code number for "thirty-two." See Doe, C. J., in Tilton *v.* American Bible Society, 60 N. H. 377, 383, "A person known to a testator as A. B. and to all others as C. D. may take a legacy given to A. B." But see Holmes, "The Theory of Legal interpretation," 12 HARV. L. REV. 417, 419. And see 21 HARV. L. REV. 434.

[4] See WIGMORE, EVIDENCE, § 2476.

[5] See WIGRAM, EXTRINSIC EVIDENCE IN THE INTERPRETATION OF WILLS, Introductory Observations, plac. 9 (2 American ed., 53).

[6] See Kales, "Considerations Preliminary to the Practice of the Art of Interpreting Writings," 28 YALE L. JOUR. 33, 34.

an additional inquiry after having discovered the writer's intention — to wit, has the intention been so expressed as to give it legal validity.[7]

If the court of construction after disregarding the erroneous lot numbering still finds in the will such attributes ascribed to the lot as "belonging to me" and "together with the improvements thereon," and these attributes fit only the lot the testator intended to devise, it seems plain that there is a sufficient expression of the testator's intent and that the lot should pass in spite of the erroneous numbering.[8] Yet in a recent Florida case,[9] although the will in dispute contained expressions which would seem to be equivalent to the testator's saying that he devised property belonging to himself, the court held the property not sufficiently identified. Either these expressions were not called to the attention of the court or the court did not think them worthy of consideration, for no mention is made of them in the opinion.

If the will contains no express statement that the testator is devising his own property, it is more difficult to say that the will sufficiently expresses the testator's intent. In the much-cited case of *Kurtz* v. *Hibner*,[10] where the land was described only by township, range, and lot, and an element of this description was wrong, the Illinois court held that the land would not pass, and in the recent case of *Stevenson* v. *Stevenson*[11] it has affirmed its position. This latter case contained a strong dissenting opinion and has resulted in considerable controversy and a proposal for legislative action.[12] The only question in such a case is, did the court avail itself of all the descriptive matter in the will? We have seen that a court should look beyond the mere section numbering of the property and that an important descriptive element is any expression in the will that the property belonged to the testator.[13] Mr. Kales, writing *a propos* of the later Illinois decision, says, "I for one would not quarrel with the court if it found regularly and *prima facie* in a will, a devise

[7] See Hawkins, "On the Principles of Legal Interpretation," 2 JURID. SOC. PAPERS, 298, reprinted in THAYER, PRELIM. TREAT., Appendix C.

[8] Patch *v.* White, 117 U. S. 210 (1886). The court found the land described as belonging to the testator, in the introductory word of the will: "And touching worldly estate, wherewith it has pleased Almighty God to bless me in this life, I give devise and dispose of the same in the following manner and form. . . ."

[9] Perkins *v.* O'Donald, 82 So. 401 (1919). The introductory words were similar to those in Patch *v.* White, *supra*. The testatrix ". . . recites that being desirous of settling her worldly affairs and directing how the estates with which it has pleased God to bless her shall be disposed of after her death, she made, published and declared the document to be her last will, . . ." It will be noticed, however, that this is not a direct statement that the testatrix hereby gives the estates which she owns, as in Patch *v.* White. But it is submitted that it is sufficient indication of testatrix's intention to give property that she owned.

[10] 55 Ill. 514 (1870).

[11] 285 Ill. 486, 121 N. E. 202 (1918). In this case the testator devised "the southeast quarter of the southwest quarter of section five; also the south half of the east half of the southeast quarter of section eight . . . all in township seven, north of the base line and range six west of the fourth principal meridian situated in the county of Hancock in the State of Illinois." The testator owned no land in township seven, range six, but the section and quarter section numbering correctly described land owned by the testator in township six, range seven.

[12] See 2 ILL. L. BULL. 175, 286, 293. The legislation proposed was to give courts of equity jurisdiction to "correct such mistake and give effect to the actual intent of the testator." 2 ILL. L. BULL. 178.

[13] Patch *v.* White, *supra*.

of land 'belonging to me,' though the words 'belonging to me' were not explicitly used." [14] But is it necessary to make this an assumption? Does it not follow from the use in the will of the words "give," "devise," or "bequeath"? It is true that it is now possible to devise after-acquired property, yet the fact remains that in the majority of cases the testator "devises" property he owns. The court having found, from evidence *dehors* the will, an intent to devise property owned by the testator, it would seem that the word "devise" should be a sufficient expression of that intent to give it legal validity. It is possible, although not evident from the report, that a recent Iowa case was decided on some such theory.[15] From the report it does not appear that there was any designation of the property as "belonging to me," or any description beyond that of township and section, yet the court allowed the property the testator intended to pass under the will.

If the court cannot find expressly or impliedly in the will any words which describe the land as belonging to the testator, it seems that the devise must fail. Giving the correct section, when township and range are wrong, does not alone seem a sufficient expression of the testator's intent to give a specific lot of land.[16] But it is dangerous to dogmatize on a problem of construction, and the solution of such a problem must always depend largely on the facts of the particular case.

RECENT CASES

ADMIRALTY — TORTS — LIMITATION OF LIABILITY. — A tug with a car float in tow collided with a steamship. Both the steamship and the tug were negligent. The owner of the tug and car float seeks to limit his liability to the value of the tug. *Held*, that he may do so. *The Begona II*, 259 Fed. 219 (Dist. Ct. D. Md.).

Federal legislation limits the liability of a shipowner to the value of his interest for any damage caused by a collision occurring without his privity or knowledge. See REV. STAT., § 4283. The maritime law, however, had previously limited liability in the same way for the same reason that influenced Congress,— encouragement of shipping. See *Norwich & New York Transportation Co.* v. *Wright*, 13 Wall. (U. S.) 104, 116. See also HUGHES, ADMIRALTY, 302, 303. The courts apportion the damages for a collision equally among all the ships responsible therefor, regardless of ownership. *The Manhattan*, 181 Fed. 229; *The Eugene F. Moran*, 212 U. S. 466. The rule is the same if some of the vessels are in the tow of others. *The Eugene F. Moran, supra.* But the second circuit has properly held that the negligence of the towing vessel should not be imputed to the tow. *The Transfer No. 21*, 248 Fed. 459. See also *Sturgis* v. *Boyer*, 24 How. (U. S.) 110. But the sixth and ninth circuits have reached an opposite conclusion on the ground that by being engaged in a common enterprise the two vessels are to be treated as one. *The Thompson Towing & Wrecking Ass'n* v. *McGregor*, 207 Fed. 209; *Shipowners' & Merchants' Tugboat Co.* v. *Hammond Lumber Co.*, 218 Fed. 161. The fourth circuit, however, has held that a barge in tow is a separate vessel to such an extent that it must comply

[14] 2 ILL. L. BULL. 290.

[15] Wilmes *v.* Tiernay, 174 N. W. 271 (1919).

[16] *Cf.* Nussey *v.* Jeffery, [1914] 1 Ch. 375, "their daughter" held a sufficient expression of testator's intent to give to one particular one of five daughters, identified by extrinsic evidence.